

**SALE BY REFERENCE
MARCH 1994**

PART 1

**GENERAL INFORMATION AND
INSTRUCTIONS**

DRMS Form 81
OCT93

1. RECEIPTS.

Receipts for payment are not furnished Purchasers. It is the Purchaser's responsibility to ensure that the Government has received payment, prior to effecting removal of the property. Property will not be released until payment is received. All payments must be submitted directly to the Sales Office conducting the sale unless the Purchaser is instructed otherwise.

2. REFUNDS.

Bid deposit instruments of unsuccessful Bidders will be returned. Bid deposits submitted in the form of cash will be refunded by U.S. Government check. All refunds will be made as promptly as possible.

3. BID INFORMATION.

A list of successful Bidders will be mailed to all participants in the sale (sealed bid sales only) or any other individual who submits their request to the appropriate Sales Office. Bidders will be permitted to examine the abstract of Bid or sale resume at the Sales Office; however, bid information will not be furnished until awards are made.

Copies of bid abstracts and unofficial high bid listings may be purchased from the appropriate Sales Office at a cost of \$10.00 each.

4. REMOVAL OF PROPERTY.

Property will be released to the Purchaser or its authorized representative when the official notice of award or a written authorization from the Purchaser is presented to the Property Disposal Officer, or designee, at the property location. Purchasers are responsible for making all necessary arrangements for the removal of

their property. Whenever employing the services of another party to accomplish removal, Purchasers are advised to give their agent or carrier complete information regarding the removal, including weight, packing instructions and final contract removal date. Purchasers should also maintain close contact with their agent or carrier to assure that removal is accomplished as prescribed under the terms and conditions of their contract.

5. COMMON CARRIERS AND PACKING CONCERNS.

Upon request, the activity where the property is located will provide a list of common carriers and packing concerns serving that geographic area. This list is compiled from local sources and may not be complete. The Government does not assume responsibility or liability for services furnished by any of the firms listed, nor does the Government endorse the use of or business practices of any listed business.

6. STATE OR USE TAX.

Any sale or use tax imposed by any state, country or political subdivision will be paid by the purchaser.

7. EXPORT/IMPORT OF PROPERTY.

Property purchased from the United States Government may or may not be authorized for export/import from or into the country where property is located. If export/import is allowed, the Purchaser is solely responsible for obtaining required clearances or approvals.

8. BIDDERS RECORDING SERVICES.

Commercial recording firms occasionally attend bid openings and furnish unofficial bid results to its customers. Information provided by such firms is not official and will not be construed to imply that an award will be made.

9. CUSTOM DUTIES AND TAXES.

Items purchased outside the United States may be subject to foreign government taxes, duties, or similar charges. Payment of such assessments is the responsibility of the Purchaser. The Purchaser must provide documentation of payment to the Sales Office before removal of the property will be allowed.

10. ORIGIN OF PROPERTY.

Unless otherwise stated in the Invitation for Bid, all items are considered to be of United States origin.

11. LAW GOVERNING CONTRACT.

Where a dispute arising under a contract requires consideration of the law, the rights and obligations of the parties will be determined by the law of the United States of America.

12. TRANSLATION.

Where disagreement exists between the English text and a foreign language translation of this document, the English text will govern.

13. CERTIFICATE OF RELEASE OF A MOTOR VEHICLE -Standard Form (SF) 97.

An SF 97 is not generally issued to Purchasers of vehicles sold as scrap or those which have been subjected to extensive reclamation or cannibalization. However, this documentation can be issued if requested by the Purchaser, provided a complete serial number can be found on the body or chassis of the vehicle. A request for issuance of an SF 97 must be submitted to the Defense Reutilization and Marketing Office (DRMO) or Sales Contracting Officer for determination prior to removal of the property. Such requests generally will not be honored after removal.

14. TRANSIT OF PROPERTY.

Purchasers of United States Government property located in countries other than where the Purchaser resides, are reminded to check host country requirements for removal and transit of property. The local Customs Office of the host country may require a special type of conveyance and posting of monetary or other security before release of the property from the storage location.

15. SAFETY EQUIPMENT.

Customers must possess and use appropriate safety equipment, and clothing whenever in the operational areas of any DRMO.

16. JOINT BID.

a. Joint Bid are acceptable if:

(1) The joint bid and all principals of the joint venture are disclosed on the bid form (SF 114) or the

Bidder registration (DRMS Form 1581);

(2) The joint bid does not disregard the required CERTIFICATE OF INDEPENDENT PRICE DETERMINATION clause Part 2, Condition 19 of this pamphlet.

(3) The joint bid does not tend to restrict competition. (NOTE: COLLUSIVE BIDDING IS ILLEGAL. IT VIOLATES THE SHERMAN ANTITRUST ACT, 15 U.S.C. 1, A FELONY OFFENSE.)

b. The person signing the bid is certifying that they:

(1) are the person in the organization responsible for determining the prices being offered in this bid, and that they have not participated and will not participate in any action contrary to the Certificate of Independent Price Determination provision; or

(2) are authorized to act for the principals of the Bidder's organization in certifying that the principals have not participated, and will not participate in any action contrary to the Certificate of Independent Price Determination.

17. DENIAL OF ACCESS TO DRMS FACILITIES.

The following individuals and firms are prohibited from participating in and receiving an award from any sale or entering the facilities of this agency:

a. Those who have committed a security trade control violation under a surplus or foreign excess sales contract.

b. Those who are indebted to the Government under surplus or foreign excess sales contracts.

c. Those who are either suspended, proposed for debarment or debarred by DRMS, Department of Defense (DoD) or any other Executive Agency from participation in the Surplus and Foreign Excess Sales Program.

d. Those who are listed in the Department of Commerce Table of Denial Orders.

26. LAWS AND REGULATIONS.

The Purchaser, its employees and agents must identify and comply with all applicable Federal, International, State, Department of Transportation and local safety and environmental statutes, municipal laws,

ordinances, and regulations applicable to the processing, use or disposal of any property purchased.

PART 2

SALE OF GOVERNMENT PROPERTY GENERAL SALES TERMS AND CONDITIONS

DRMS Form 84
OCT93

1. INSPECTION.

The Bidder is invited, urged, and cautioned to inspect the property prior to submitting a bid. Property will be available for inspection at the places and times specified in the Invitation.

2. CONDITION AND LOCATION OF PROPERTY

Unless otherwise provided in the invitation, all property listed therein is offered for sale "as is" and "where is". Unless otherwise provided in the Invitation, the Government makes no warranty, express or implied, as to quantity, kind, character, quality, weight, size, or description of any of the property, or its fitness for any use or purpose. Except as provided in conditions No. 12 and 14 or other special conditions of the Invitation, no request for adjustment in price or for rescission of the sale will be considered. This is not a sale by sample.

3. CONSIDERATION OF BIDS.

(a) Unless otherwise provided in the Invitation, telegraphic or telephonic Bids will not be considered.

(b) The Bidder agrees that his bid will not be withdrawn within the period of time specified for the acceptance thereof following the opening of bids (60 calendar days if no period is specified by the Government or by the bidder, but not less than 10 calendar days in any case) and during such period his bid will remain firm and irrevocable. The Government reserves the right to reject any or all bids, including bids under which a Bidder would take unfair advantage of the Government or other Bidders, to waive any technical defects in Bids, and unless otherwise specified by the Government or by the Bidder, to accept any one item or group of items in the bid, as may be in the best interest of the Government. Unless the Invitation otherwise provides, a bid covering any listed item must be submitted on the basis of the unit specified for that

item and must cover the total number of units designated for that item.

4. FORMS OF BID DEPOSITS AND PAYMENTS

Unless otherwise provided in the Invitation, bid deposits (when required by the invitation) and payments shall be in U.S. currency or any form of credit instruments other than promissory notes, made payable on demand in U.S. currency; Provided, that uncertified personal or business checks must be first party instruments; Provided further, That if in connection with any prior sale, the Bidder or Purchaser tendered an uncertified personal or business check which was not paid by the Drawer of the check were so notified in writing by the selling agency, uncertified personal or business checks will not be an acceptable form of bid deposit or payment. Bids submitted after the effective date specified in the written notification referred to which are not accompanied by the proper bid deposit will be summarily rejected.

5. BID PRICE DETERMINATION.

When bids are solicited on a unit price basis, Bidders will insert their unit prices and total prices in the space provided for each item.

(a) In the event the Bidder inserts a total price on the item but fails to insert a unit price, the Government will determine the unit price by dividing the total price by the quantity of the item set out in the Invitation. The unit price so determined shall be used for the purpose of bid evaluation, award, and all phases of contract administration.

(b) When bids are solicited on a "lot" bases, Bidders should submit a single total price in the Total Price Bid column of the bid sheet. Bidders should not make any entry in the Unit Price Bid column. In the event a Bidder submits a total bid price and also a unit bid price which are not identical, the unit bid price will not be considered.

6. PAYMENT.

The Purchaser agrees to pay for property awarded to him in accordance with the prices quoted in his bid. Subject to any adjustment made pursuant to other provisions of this contract, payment of the full purchase price, after applying the total bid deposit, if any, must be made within the time specified in the Invitation and prior to delivery of any of the property. If an adjustment is made requiring additional payment, such payment must be made immediately upon notice of such adjustment. In the absence of any debts owed to the

selling agency, where the total sum becoming due to the Government from the Purchaser on a contract awarded to him under the Invitation is less than the total amount deposited with his bid, the difference will be promptly refunded and also, deposits accompanying bids which are not accepted will be promptly refunded to the Bidder. No refund or demands will be made for any amount less than one dollar (\$1).

7. TITLE.

Unless otherwise provided in the Invitation, title to the property sold hereunder shall vest in the Purchaser as and when removal is effected. On all motor vehicles and motor-propelled or motor-drawn equipment requiring licensing by a State motor vehicle regulatory agency, a certificate of release, Standard Form 97, will be furnished for each vehicle and piece of equipment unless otherwise provided in the Invitation.

8. DELIVERY, LOADING, AND REMOVAL OF PROPERTY.

(a) Unless otherwise provided in the Invitation, the Purchaser shall be entitled to obtain the property upon full payment therefor with delivery being made only from the exact place where the property is located within the installation. The Purchaser must make all arrangements necessary for packing, removal, and transportation of property. The Government will not act as liaison in any fashion between the Purchaser and carrier, nor will the Government recommend a specific common carrier. Loading will only be performed as set forth in the Invitation, and unless otherwise provided in the Invitation, loading will not be performed on Saturdays, Sundays, Federal holidays, or any day that the installation where the property is located is closed. Where it is provided that the Government will load, the Government will make the initial placement of the property on conveyance(s) furnished by the Purchaser and the initial placement on the Purchaser's conveyance shall be as determined by the Government. Unless otherwise provided in the Invitation, the Government will not block, chock, brace, lash, band, or in any other manner secure the cargo on such conveyance(s) furnished by the Purchaser.

(b) Where it is provided in the Invitation that the Government will not load or that the Purchaser will load, the Purchaser will make all arrangement and perform all work necessary to effect removal of the property. The Purchaser shall remove the property at his expense within the period of time allowed in the Invitation. If the Contracting Officer determines that

the failure to remove the property within the period of time originally allowed arose out of causes beyond the control and without the fault or negligence of the Purchaser, such determination shall be reduced to writing, and a reasonable extension of time for removal shall be allowed. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather. If the Purchaser is permitted to remove the property after the expiration of the time originally allowed for removal or any additional time allowed by the Contracting Officer pursuant to this clause, the Government, with limiting any other rights which it may have, may require the Purchaser to pay a reasonable storage charge. The Purchaser shall reimburse the Government for any damage to Government property caused during removal operations by the Purchaser or his authorized representative.

(c) Items purchased under the Invitation will be released only to the Purchaser or his authorized representative. The authorized representative must furnish authorization from the Purchaser to the Custodian of the property location before any delivery or release will be made. When property is described as being boxed, packed, crated, skidded, or in containers, the Government does not warrant that the property, as packaged, is suitable for shipment.

(d) Segregation, culling, or selection of property for the purpose of effecting partial or increment removals will not be permitted except as specifically authorized and prescribed by the Government.

9. DEFAULT.

If, after the award, the Purchaser breaches the contract by failure to make payment with the time allowed by the contract as required by Condition No. 6, or by failure to remove the property as required by Condition No. 8, then the Government may send the Purchaser a 15-day written notice of default (calculated from date of mailing), and upon Purchaser's failure to cure such default within that period (or such further period as the Contracting Officer may allow), the Purchaser shall lose all right, title, and interest which he might otherwise have acquired in and to such property as to which a default has occurred. The purchaser agrees that in the event he fails to pay for the property or remove the same within the prescribed period(s) of time, the Government shall be entitled to retain (or collect) as liquidated damages a sum equal to the greater of (a) 20 percent of the purchase price of the item(s) as to which the default has occurred, or (b) \$25, or the purchase

price of such item(s) if the purchase price is less than \$25: Provided, That in the event of multiple awards of items under a single Invitation for Bids, the amount to be charged, if the minimum charge provided for in (b) above is applicable, shall be determined by the total purchase price reflected in the award documents; Provided further, That the maximum sum which may be recovered by the Government shall specifically apprise the Purchasers, either in its original notice of default (or in separate subsequent written notice), that upon the expiration of the period prescribed for curing the default, the formula amount will be retained (or collected) by the Government as liquidated damages. However, if the property was sold on a "per lot" basis and the Purchaser removes a portion of the lot but fails to remove the balance, no portion of the purchase price will be refunded. If the Purchaser otherwise fails in the performance of his obligations, the Government may exercise such rights and may pursue such remedies as are provided by law or under the contract.

10. SETOFF OF REFUNDS.

The Bidder or Purchaser agrees that the selling agency may use all or a portion of any bid deposit or refund due him to satisfy, in whole or in part, any debt arising out of prior transactions with the Government.

11. INTEREST.

Notwithstanding any other provisions of this contract, unless paid within 30 calendar days from the date of first written demand, all amounts that become payable by the Purchaser to the Government under this contract shall bear simple interest at the rate which has been established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), from the date of first written demand until paid.

12. ADJUSTMENT FOR VARIATION IN QUANTITY OR WEIGHT.

Unless otherwise provided in the Invitation, when property is sold by a unit other than "weight", the Government reserves the right to vary the quantity tendered or delivered to the Purchaser by 10 percent; when the property is sold by "weight", the Government reserves the right to vary the weight tendered or delivered to the purchaser by 25 percent. The purchase price will be adjusted upward or downward in accordance with the unit price and on the basis of the quantity or weight actually delivered. Unless otherwise specifically provided in the Invitation, no adjustment for

such variation will be made where property is sold on a "price for the lot" basis.

13. WEIGHING, SWITCHING, AND SPOTTING.

Where weighing is necessary to determine the exact purchase price, the Purchaser shall arrange for and pay all expenses of weighing the property (unless Government scales are available on the premises). All switching and spotting charges shall be paid by the Purchaser unless such services are performed with Government-owned or Government-operated locomotives on Government property. When removal is by truck, weighing shall be under the supervision of the Government and at its option on: (a) Government scales, (b) certified scales, or (c) other scales acceptable to both parties. When removal is by rail, weighing shall be on railroad track scales, or by other means acceptable to the railroad for freight purposes.

14. RISK OF LOSS.

Unless otherwise provided in the Invitation, the Government will be responsible for the care and protection of the property subsequent to it being available for inspection and prior to its removal. Any loss, damage, or destruction occurring during such period will be adjusted by the Contracting Officer to the extent it was not caused directly or indirectly by the Purchaser, its agents, or employees. At the discretion of the Contracting Officer, the adjustment may consist of rescission. With respect to losses only, in the event the property is offered for sale by the "lot," no adjustment will be authorized under this provision unless the Government is notified of the loss prior to removal from the installation of any portion of the lot with respect to which the loss is claimed.

15. LIMITATION ON GOVERNMENT'S LIABILITY.

Except for reasonable packing, loading, and transportation costs (such as packing, loading, and transportation costs being recoverable only when a return of property at Government cost is specifically authorized in writing by the Contracting Officer) the measure of the Government's liability in any case where liability of the Government to the Purchaser has been established shall not exceed refund of such portion of the purchase price as the Government may have received.

16. ORAL STATEMENTS AND MODIFICATIONS.

Any oral statement or representation by any representative of the Government, changing or supplementing the Invitation or contract or any Condition thereof, is unauthorized and shall confer no right upon the Bidder or Purchaser. Further, no interpretation of any provision of the contract, including applicable performance requirements, shall be binding on the Government unless furnished or agreed to, in writing, by the Contracting Officer or his designated representative.

17. COVENANT AGAINST CONTINGENT FEES.

(a) The Purchaser warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingency fee.

(b) "Bona Fide agency," as used in this clause, means an established commercial or selling agency, maintained by a Purchaser for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona Fide employee," as used in this clause, means a person, employed by Purchaser and subject to the Purchaser's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to consideration or to act regarding a Government contract on any basis other than the merits of the matter.

18. OFFICIALS NOT TO BENEFIT.

No member of or Delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation

for corporation's general benefit.

19. CERTIFICATE OF INDEPENDENT PRICE DETERMINATION.

(a) The Purchaser certifies that -

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other Purchaser or competitor relating to (I) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered.

(2) The prices in this offer have not been and will not be knowingly disclosed by the Purchaser, directly or indirectly, to any other Purchaser or competitor before bid opening (in the case of a formally advertised solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the Purchaser to include any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory -

(1) Is the person in the Purchaser's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2)(I) Has been authorized, in writing, to act as agent for the principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the Purchaser deletes or modifies subparagraph (a)(2) above, the Purchaser must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

20. ASSIGNMENTS OF CONTRACTS.

Any contract awarded under the Invitation is subject to the provisions of 41 U.S.C. 15 which generally precludes assignment of such contract.

21. CLAIMS LIABILITY.

The Bidder or Purchaser agrees to save the Government harmless from any and all actions, claims, debts, demands, judgments, liabilities, costs and attorney's fees arising out of, claimed on account of, or in any

manner predicated upon loss of or damage to property and injuries, illness or disabilities to or death of any and all persons whatsoever, including members of the general public, or to the property of any legal or political entity including State, local and interstate bodies, in any manner caused by or contributed to by the Bidder or Purchaser, its agents, servants, employees, or any person subject to its control while in, upon or about the sale site and/or the site on which the property is located, or while the property is in the possession of or subject to the control of the Bidder or Purchaser, its agents, servants or employees after the property has been removed from Government control.

22. WITHDRAWAL OF PROPERTY AFTER AWARD.

The Government reserves the right to withdraw for its use any or all of the property covered by this contract, if a bona fide requirement for the property develops or exists prior to actual removal of the property from Government control. In the event of a withdrawal under this condition, the Government shall be liable only for the refund of the contract price of the withdrawn property or such portion of the contract price as it may have received.

23. ELIGIBILITY OF BIDDERS.

The Bidder warrants that he is not: (a) under 18 years of age; (b) an employee of an agency of the Federal Government (either as a civilian or as a member of the Armed Forces of the United States, including the United States Coast Guard, on active duty) prohibited by the regulations of that agency from purchasing property sold hereunder; (c) an agent or immediate member of the household of the employee in (b) above. For breach of this warranty, the Government shall have the right to annul this contract without liability.

24. REQUIREMENTS TO COMPLY WITH APPLICABLE LAWS AND REGULATIONS.

It is the Bidder's responsibility to ascertain and comply with all applicable Federal, State, local, and multi-jurisdictional laws, ordinances, and regulations pertaining to the registration, licensing, handling, possession, transportation, transfer, export, processing, manufacture, sale, use or disposal of the property listed in the Invitation. Purchasers or users of this property are not excused from any violation of such laws or regulations either because the United States is a party to this sale or has had any interest in the property at any time.

25. DEFINITIONS.

As used herein, the following terms shall have the meaning set forth below:

(a) "Telegraphic bid" and "telegraphic notice" include bids and notices by telegram or by mailgram.

(b) "Contracting Officer" means the person accepting the bid in whole or in part on behalf of the Government, and any other officer or civilian employee who is properly designated Contracting Officer; and includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of the representative's authority.

(c) A "small business concern" for the purpose of the sale of Government-owned property is a concern which can qualify under the small business classification criteria referenced in 13 CFR 121.3-9.

26. LAWS AND REGULATIONS.

The Purchaser, its employees and agents must identify and comply with all applicable Federal, State, Department of Transportation and local safety and environmental statutes, municipal laws, ordinances, and regulations applicable to the processing, use or disposal of any property purchased.

27. PALLETS AND CONTAINERS.

All pallets, skids and containers in or on which the property is stored or displayed are not for sale and will not be removed unless specifically provided in the Invitation for Bid.

28. STORAGE CHARGES/LATE REMOVAL CHARGES.

In accordance with Part 2, Condition 8, DELIVERY, LOADING AND REMOVAL OF PROPERTY, if the Purchaser is allowed to remove property after the final removal date, as stated on the award document (DRMS Form 1427) or any extended date as granted by the Sales Contracting Officer, the Purchaser will be required to pay storage charges (Continental United States or CONUS) / liquidated damages (OVERSEAS) for the late removal.

Unless otherwise specified in the Invitation for Bid, storage charges/liquidated damages for each line item stored inside will be twelve cents (\$.12) per hundred pounds, or \$.264 per hundred kilograms (overseas), per day. Rates for outside storage will be six cents (\$.06) per hundred pounds or \$.132 per hundred kilograms

(overseas) for each line item per day. Fractions of hundred weights will be rounded up to the nearest hundred weight (e.g., 201 pounds = 300 pounds).

Storage charges/liquidated damages will be assessed for all property using the estimated or advertised weight contained in the item description. However, when property is sold by weight, storage charges/liquidated damages will be assessed in accordance with the actual weight delivered.

Purchaser will only be assessed storage charges/liquidated damage charges for property actually removed. The minimum charge is \$10.00 per line item.

Storage charges/liquidated damage charges will not exceed 50 percent of the total contract price, unless 50 percent of the total contract price is less than the minimum rate. In those instances, the minimum rate will apply.

When storage charges/liquidated damage charges are assessed, payment must be made by the Purchaser prior to removal of the property unless otherwise authorized by the Contracting Officer.

Storage charges/liquidated damages will not be assessed for Saturdays, Sundays, Federal holidays or any day that the installation or DRMO is closed, unless otherwise specified in the Invitation for Bid.

29. LETTERS OF CREDIT.

Letters of credit may be used to support uncertified personal or company checks as bid deposits or payments, if the letter of credit meets all of the following requirements:

- a. It must be either an original document on bank stationery or clearly state on its face that reproductions of the original document may be considered as an original document.
- b. It must be signed by a bank officer or a duly authorized representative of the bank.
- c. It must either clearly state that it is a letter of credit or otherwise constitute a letter of credit under Article 4 of the Uniform Commercial Code.
- d. It cannot be revocable.
- e. It must state the name and address of the Bidder/Purchaser which is covered by the letter of credit.

f. It must reference the sale number for which it is provided.

g. It must indicate the maximum amount guaranteed.

h. Under the terms or the letter of credit, drafts must be honored at any time they are presented.

30. GUARANTEED DESCRIPTIONS.

Despite any other conditions of sale, the Government guarantees to the original Purchaser that the property will be as described in the Invitation For Bid; however:

a. If a misdescription is determined to exist prior to removal of the property, the Government will:

(1) Allow the Purchaser to sign a waiver accepting the property as is, with no adjustment made to contract price for that item.

(2) Cancel the item from the contract and refund the Purchaser any money the Government has already received for the item.

b. If a misdescription is determined to exist after removal of the property, the Government will adjust the purchase price paid for the property or any portion thereof determined to be misdescribed commensurate with the fair market value of the property actually received; however:

(1) No adjustment will be made for shortages of property sold by the "lot," and

(2) No adjustment will be made unless the Purchaser notifies the Contracting Officer of any misdescription by written notice, within 30 calendar days after removal of the property (except for property purchased overseas for import into the United States, in which case the Purchaser has 60 calendar days from the date of removal or 30 calendar days from the date of importation, whichever is less). The Purchaser must hold the property intact to permit inspection or identification by the Government. FURTHERMORE, THE GOVERNMENT DOES NOT WARRANT OR GUARANTEE ANY OF THE FOLLOWING:

(a) Information in the item description pertaining to condition, acquisition cost, estimated total weight, estimated shipping dimensions, manufacturer's part number, Federal Stock Number or the property's fitness for any use or purpose.

(b) Estimated "weight" of property offered for sale by the "unit" or by the "lot."

(c) Estimated number of "units" of property offered for sale by "weight."

c. Should the Contracting Officer determine that a misdescription exists after removal of property, regardless of the exceptions stated above under this clause, the Government will accept return of the misdescribed property at the Purchaser's expense, to a location specified by the Contracting Officer, for a refund of any money received for that property, provided the Contracting Officer received timely notice of the misdescription as stated in paragraph b(2) above.

d. This warranty is in lieu of all other guarantees, expressed or implied and all other obligations on the part of the Government. The Purchaser is not entitled to any payment for loss of profits or any other monetary damages, special, direct, indirect, or consequential. Recovery of any kind against the Government under this provision is limited to a refund of the purchase price of the material found to have been misdescribed. THE GOVERNMENT DOES NOT WARRANT THE MERCHANTABILITY OF THE PROPERTY OR ITS FITNESS FOR ANY USE OR PURPOSE.

31. NOTICE OF DEBARRED OR SUSPENDED CONTRACTORS.

Any contract awarded to an individual or firm is voidable, at the option of the Government if, at the time of award the Purchaser was proposed for debarment, has been debarred, suspended, or for any other reason is ineligible to receive a Government contract.

32. DISPUTES.

Any contract awarded as a result of this sale is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

33. TIE-IN AND ALL-OR-NONE BID.

Unless specified in the Invitation for Bid, qualified, tie-in, all-or-none or combination Bid are not acceptable and will be rejected as nonresponsive. This includes Bid conditioned upon the acceptance or nonacceptance of Bid on other items. The Invitation for Bid may specify that such Bid are only acceptable for certain items.

34. DEMURRAGE AND OTHER STANDBY COSTS.

Whenever the Invitation for Bid specifies that the Government will load, the Government will not be liable for any costs, direct or indirect, incurred by a Purchaser because of the Government's failure to load property in a timely manner. The only remedy for such a failure is an appropriate extension of the free removal period.

PART 3

ADDITIONAL SPECIAL SEALED BID CONDITIONS

DRMS Form 99
OCT93

ARTICLE A. BID DEPOSITS

Deleted.

ARTICLE B. MODIFICATION OR WITHDRAWAL OF BIDS.

Bids may be modified or withdrawn by written or telegraphic notice and a bid also may be withdrawn in person by a bidder or his authorized representative, provided his identity is made known and he signs a receipt for the bid. Where a bid deposit is required by the Invitation, any modification which increases the amount of a bid already submitted or which submits bids on items not previously bid upon must provide for an increased bid deposit.

ARTICLE C. CONSIDERATION OF LATE BIDS, MODIFICATIONS, OR WITHDRAWALS.

Bids and modifications or withdrawals thereof, must be in the possession of the Contracting Officer by the time set for bid opening. Any bid, modification, or withdrawal received after the time set for bid opening will not be considered unless received by the Contracting Officer prior to award, was mailed (or telegraphed where authorized) and in fact delivered to the address specified in the Invitation for Bids in sufficient time to have been received by the Contracting Officer by the time and date set forth in the Invitation for the bid opening, and except for delay attributable to personnel of the sales office or their designees, would have been received on time. In no event will hand-carried bids or withdrawals be considered if delivered to the Contracting Officer after the exact time and date set

for bid opening. However, a modification which makes the terms of the otherwise successful bid more favorable to the Government will be considered at any time it is received prior to award and may be accepted.

ARTICLE D. AWARD OF CONTRACT.

The contract will be awarded to that responsible Bidder whose bid conforming to the Invitation will be most advantageous to the Government, price and other factors considered. A written award mailed (or otherwise furnished) to the successful Bidder within the time for acceptance provided in the Invitation shall be deemed to result in a binding contract without any further action by either party.

ARTICLE E: ALL-OR-NONE-BID.

Unless otherwise specified in the Invitation for Bid, all-or-none bids are acceptable on this sale. The Invitation may limit which items are eligible for such Bid. Check the invitation.

- a. Bids may be submitted conditioned upon the Government accepting or not accepting bids on other line items. Bids may also be submitted on an "all-or-none" basis.
- b. When an "all-or-none" bid is submitted, the Bidder may not submit individual item bids for the same items. If an "all-or-none" bid is submitted along with individual item bid(s) and the individual item bid cover a part or all the same items of the "all-or-none" bid, only the "all-or-none bid will be considered. Those individual item bids that are encompassed in the "all-or-none" bid will be rejected and not considered for individual award.
- c. When an "all-or-none" bid is submitted, the Government reserves the right for contract administration purposes to establish individual line item prices against the "all-or-none" bid. Such prices will be determined by prorating the items listed under the "all-or-none" bid against the same high responsive individual bids received. If no other bid were received, the proration will be made using what the Government considers to be a fair market value for the items.
- d. When an "all-or-none" bid is received, and the Government has withdrawn any of the items involved in the bid, all remaining items in that bid cannot be considered for award unless the bid is qualified by inserting the following language:

IN THE EVENT THE GOVERNMENT WITHDRAWS

ANY OF THE ITEMS COVERED BY MY "ALL-OR-NONE" BID, I DESIRE THE REMAINING ITEMS TO BE CONSIDERED ON A PRO RATA "ALL-OR-NONE" BASIS. ARTICLE A: SCRAP WARRANTY.

The Purchaser certifies this property is being purchased as scrap and will ensure scrapping is accomplished in a manner that prevents recognition or reconstruction. The Contracting Officer will be notified prior to removal where scrapping will take place. Part 2, Condition 7, TITLE, is modified so that title will not transfer until all scrapping has been accomplished. If the Purchaser fails to scrap the property and provide the Contracting Officer with a certification of completion within 30 days after removal, or any additional time as may be provided for or granted by the Contracting Officer, the Government may elect to default the contract and repossess the property. In addition to the provisions stipulated under the clause entitled, "Default", the Purchaser will be charged with all costs incurred by the Government to repossess and resell this property.

PART 5

ADDITIONAL SPECIAL CIRCUMSTANCE CONDITIONS - MISCELLANEOUS

DRMS Form 86
OCT93

ARTICLE A: SCRAP WARRANTY

The Purchaser certifies this property is being purchased as scrap and will ensure scrapping is accomplished in a manner that prevents recognition or reconstruction. The Contracting Officer will be notified prior to removal where scrapping will take place. Part 2, Condition 7, TITLE, is modified so that title will not transfer until all scrapping has been accomplished. If the Purchaser fails to scrap the property and provide the Contracting Officer with a certification of completion within 30 days after removal, or any additional time as may be provided for or granted by the Contracting Officer, the Government may elect to default the contract and repossess the property. In addition to the provisions stipulated under the clause entitled "Default", the Purchaser will be charged with all costs incurred by the Government to repossess and resell this property.

ARTICLE B: CONVICT LABOR.

In connection with the performance of work under this contract, the Purchaser agrees not to employ any person undergoing sentence or imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 4082(c)(2) and Executive Order 11755, December 29, 1973.

ARTICLE C: CONTRACT WORK HOURS AND
SAFETY STANDARDS ACT-OVERTIME
COMPENSATIONS.

This contract is subject to the following provisions and all other applicable provisions and exceptions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) and the regulations of the Secretary of Labor thereunder.

- a. Overtime requirements. No Contractor or Subcontractor shall require or permit any laborer or mechanic to work in excess of eight (8) hours per calendar day or forty (40) hours a workweek on work subject to the provisions of this contract. Such laborer or mechanic should receive compensation at a rate not less than one and one-half times their basic rate of pay for all hours worked in excess of an eight hour workday or forty hour workweek.
- b. Violation; liability for unpaid wages; liquidated damages. When a violation occurs regarding the provisions identified above, the Contractor and Subcontractor(s) responsible thereof shall be liable to the affected employee(s) for their unpaid wages. In addition, the Contractor and Subcontractor(s) will also be liable to the United States for liquidated damages. Such liquidated damages shall be computed for each laborer or mechanic in violation of the provisions identified above at a sum of \$10 for each calendar day the employee was required or permitted to perform such work in excess of eight hours, or a standard 40-hour work week without receiving the overtime wages entitled under this article.
- c. Withholding for unpaid wages and liquidated damages. The Contracting Officer may withhold from the Prime Contractor, any money payable for work performed by the Contractor or Subcontractor(s) which is determined necessary to satisfy any liabilities for unpaid wages and liquidated damages under this article.
- d. Subcontracts. The Contractor shall insert the above paragraphs of this clause in all subcontracts and shall require their inclusion in all subcontracts of any tier.

e. Records. The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three years from the completion of the contract.

ARTICLE D: LIABILITY AND INSURANCE.

a. The Purchaser shall, at no expense to the Government and prior to contract performance, furnish the Contracting Officer with the following Certificates of Insurance, effective throughout the term of the contract or any extensions thereof.

(1) Standard Workmen's Compensation and Employee's Liability Insurance as may be proper under applicable State or Federal statutes. The Purchaser may however, be self-insured against the risk of this subparagraph if it has obtained prior approval of the Contracting Officer. This approval will be given upon receipt of satisfactory evidence that the Purchaser has qualified as a self-insurer under the applicable provisions of law.

(2) Bodily Injury Insurance in an amount of not less than \$50,000 any one person and \$250,000 any one accident or occurrence.

(3) Property Damage Liability Insurance in the amount of \$25,000 (which shall include any and all property whether or not in the care, custody or control of the Purchaser).

b. The Purchaser, during the performance of this contract, shall be responsible for and shall hold the Government harmless from any and all loss of damage to or liability incurred with respect to property of every kind and description, except as provided in Condition 14 of the General Sale Terms and Conditions (Standard Form 114C) entitled "Risk of Loss" whether or not owned by the Government. The Purchaser shall also hold the Government harmless from bodily injury to or death caused either in whole or in part by the negligence or fault of the Purchaser, its officers, agents or employees in the performance of work under this contract.

(c) The general liability and responsibility of the Purchaser under this clause are subject to the following specific limitations: The Purchaser shall not be responsible to the Government for loss, damage, bodily injury to or death of persons when the damage, injury or death results solely from an act or omission of the Government, its employees or results solely from proper compliance by officers, agents or employees of

the Purchaser when specific written directions are provided from the Contracting Officer or its authorized representative.

ARTICLE E: PAPER RECORDS AND DOCUMENTS.

Paper Records or Documents are offered for sale as waste paper only. Therefore, the Purchaser represents, warrants and certifies to the United States Government that these types of items will not be used, offered for sale or sold for use as records or documents.

ARTICLE F: PRIVACY ACT MATERIALS.

The Purchaser understands and agrees that property purchased under this contract may contain records previously maintained as a system of records subject to the Privacy Act, 5 U.S.C. 552(a). The Purchaser, by executing this contract, understands and agrees that the Purchaser is subject to the provisions of the Privacy Act and shall exercise all care necessary to ensure compliance with its provisions with respect to the handling and disposal of protected information.

ARTICLE G: TIRE REMOVAL.

Despite the provisions in Part 2, Condition 8, the Purchaser will be permitted to cull, sort and segregate tires. Payment shall only be assessed for the weight of those tires removed by the Purchaser.

ARTICLE H: RADIO FREQUENCY DEVICES.

Some military radio frequency equipment does not comply with Federal Communications Commission rules and specifications or International Post Office and other telecommunication authority. Use of this equipment could be in violation of Federal or International law. Therefore, the Purchaser must comply with all pertinent rules and regulations under penalty of the law in the use, sale or disposition of such equipment. Questions regarding FCC law can be addressed to:

Federal Communications Commission
Office of the Chief Engineer
Laboratory Division
Attention: Chief Equipment Authorization
Branch
P.O. Box 40
Laurel, Maryland 20810

International inquiries should be addressed to the

International Post Office and/or telecommunication authority of the applicable foreign country.

ARTICLE I: MILITARY MUNITIONS LIST ITEMS (MLI).

a. The Purchaser certifies that none of the items identified in the Sales Invitation for Bid and listed on its sales contract will be directly or indirectly used or disposed of for military use or exported unless a full disclosure of the origin of the property is made by the Purchaser. The disclosure must reference the Invitation for Bid and sales contract numbers when submitted to the appropriate export licensing department or agency.

b. Despite the provisions of paragraph (a) above, Military Munitions List Items which do not require demilitarization may be sold for military or other use to the United States Government, its designees and those foreign governments or international organizations the United States Department of State issues an export license to, under the International Traffic In Arms Regulations (see 22 CFR Subchapter M, Part 121, et seq.).

ARTICLE J: STRATEGIC LIST ITEMS (SLI).

a. The Purchaser warrants and covenants that none of the items identified in the Invitation for Bid and listed on its sales contract will be directly or indirectly used or disposed of for military use or exported unless a full disclosure of the origin of the property is made by the Purchaser. The disclosure must reference this Invitation for Bid, sales contract number and be submitted to:

Office of Export Administration
P.O. Box 273
Washington, D.C. 20044

The Purchaser understands and agrees that the Office of Export Administration may require the Purchaser to mutilate the property to the extent necessary to preclude its use for its originally intended purpose, and/or require the Purchaser to have or obtain an export license before the property may be exported outside of the United States, Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands or the Virgin Islands.

ARTICLE K: MUNITIONS AND STRATEGIC LIST ITEM (MLI/SLI) COMPLIANCE.

a. The use, disposition, export and reexport of this

property is subject to all applicable United States Laws and Regulations, including the Export Administration Control Act of 1979 (50 U.S.C. Appx. 2401, et. seq.); Arms Export Control Act (22 U.S.C. 2751, et. seq.); International Traffic in Arms Regulation (22 C.F.R. 121); and Export Administration Regulation (15 C.F.R. 368 et. seq.), which in part prohibit:

(1) Making false statements and concealment of any material information regarding the use, disposition, export or reexport of the property;

(2) Any use, disposition, export or reexport of the property not authorized in accordance with the provisions of this contract.

b. Any false information provided and/or concealment of any material information regarding the use, disposition or export of this property may constitute a violation of:

(1) The provisions of 18 U.S.C 1001, which provides a maximum penalty of five years imprisonment and/or a maximum fine of \$10,000;

(2) The provisions of 22 U.S.C. 2778, which provides a maximum penalty of ten years imprisonment and/or a maximum fine of \$1,000,000;

(3) The provisions of 50 U.S.C. Appx. 2410, which provides a maximum penalty of ten years imprisonment and/or a maximum fine of five times the value of the property exported or \$1,000,000, whichever is greater, and which also provides for administrative sanctions, including civil penalties of up to \$10,000, and the revocation of authority to export goods from the United States.

ARTICLE L: MEDICAL DEVICES.

Purchasers of the medical device items identified in an Invitation for Bid shall certify and assure in writing that such items shall be used or resold only under the conditions specified below:

(a) Medical device items are subject to the laws and regulations administered by the Food and Drug Administration (FDA) or host nation statutes when the property is located overseas. Provisions of the governing statute, the Federal Food, Drug and Cosmetic Act, appear in 21 U.S.C. 311 et seq.

In summary, the Act prohibits the movement in interstate commerce of medical devices that are misbranded or altered. The act authorizes FDA to

initiate criminal enforcement proceedings against companies and/or individuals responsible for violations of its provisions. Moreover, the Act authorizes FDA to initiate civil proceedings to seize or enjoin the distribution of such items.

(b) It shall be the responsibility of the Purchaser to comply with local, state or other applicable laws.

(c) The FDA certification, appearing elsewhere in the Invitation for Bid, is required by FDA for the purchase of the medical device items. Provisions of the governing International statutes, must be determined by the Purchaser and complied with as stipulated by that foreign country.

damage, bodily injury to or death of persons when the damage, injury or death results solely from an act or omission of the Government, its employees or results solely from proper compliance by officers, agents or employees of the Purchaser when specific written directions are provided from the Contracting Officer or its authorized representative.

PART 7

ADDITIONAL SPECIAL CIRCUMSTANCE CONDITIONS HAZARDOUS AND DANGEROUS PROPERTY

DRMS Form 98
OCT93

ARTICLE A: TRANSPORTING HAZARDOUS MATERIAL CONTAINERS.

These drums/containers previously held hazardous material(s); therefore, Purchasers must comply with Department Of Transportation (DOT) Regulation 49 CFR 173.29, which requires that the drums/containers be transported over public highways in the same manner as when they contained a greater quantity of hazardous material(s).

Purchasers of drums/containers, located outside of the United States which previously held hazardous material(s) must also comply with the transportation regulations applicable to the foreign country these drums/containers are transported in or through.

ARTICLE B: CONTAINERS (HAZARDOUS

MATERIALS).

The containers in which property is offered for sale may not meet transportation specifications as regulated by the country in which they are located. If it is necessary to repackage the property, suitable space and facilities will be made available. If the Purchaser obtains a one-time permit from the Department of Transportation and/or the regulatory transportation office of a foreign country exempting this repackaging requirement, a copy of such permit must be submitted to the Sales Contracting Officer prior to transporting the property.

ARTICLE C: TRANSPORTING HAZARDOUS MATERIALS.

The transport of hazardous materials is governed by Department of Transportation Hazardous Materials Regulations (Title 49, Code of Federal Regulations, Parts 170-189). Although the Purchaser is responsible for certifying to the DOT that such hazardous materials are properly classified, described, packaged, marked and labeled and are in a condition safe to transport based on the Purchaser's own examination of the material, Section 173.7(a)(1) of the DOT Regulations states that a certification from the Department of Defense to the Purchaser describing the condition of containers will also be accepted. When shipping containers other than those authorized by Interstate Commerce Commission (ICC) or DOT are used for shipment, a DOT special permit must be obtained from the Department of Transportation prior to the movement of the material. The exemptions provided for Department of Defense containers in Section 173.7 do not apply for this purpose.

Purchasers who transport hazardous materials located outside of the United States must also comply with the transportation regulations applicable to the foreign country these drums/containers are transported in or through.

ARTICLE D: TOXIC CHEMICALS.

Purchasers are warned that the item(s) generated from chemicals or munitions may contain minute quantities of a chemical agent or decontaminate which might cause skin burn or other injury, regardless of the precautions taken to completely decontaminate this property.

ARTICLE E: DANGEROUS PROPERTY.

Purchasers are cautioned that articles or substances of a dangerous nature may remain in the property regardless of the care exercised to remove same. The Government assumes no liability for damages to property of the Purchaser or for personal injury, disability or death of the Purchaser, its employees or to any other person arising from or affiliated with the purchase, use or dispositions of this material. The Purchaser shall hold the Government harmless from any and all such demands, suits, actions, or claims arising from or otherwise relating to the purchase of this material.

ARTICLE F: COMPRESSED GAS CYLINDERS.

Purchasers are warned that this material may contain constituents of an explosive or toxic nature regardless of the care exercised by the Government to remove them or render the material harmless. Additionally, prior to reuse or resale of Government cylinders, the Purchaser must obliterate the registered Government symbol, by stamping or penning over the symbol and stamping the new users identification on the cylinder shoulder. The new cylinder identification will be reported to Bureau of Explosives, 1920 L St. N.W., Washington, D.C. 20096. No cylinder(s) obtained from the Government will be reused by the Purchaser for transportation of compressed gasses unless it meets the requirements of the hazardous materials regulation in Section 713.34, Title 49, code of Federal Regulations and the serviceability criteria of the Compressed Gas Association Pamphlet C-6.

ARTICLE G: HYDROSTATIC TESTING.

Hydrostatic testing of each cylinder shall be performed by the Purchaser as prescribed by Method 1, 2, or 3 described in "Methods for Hydrostatic Testing of Compressed Gas Cylinders", Pamphlet C-1, Compressed Gas Association, Inc., which may be obtained for a fee from the Compressed Gas Association, Inc., 1235 Jefferson Davis Highway, Arlington, VA 22202.

ARTICLE H: DISPOSITION OR END USE OF COMPRESSED GAS CYLINDERS.

Cylinders that pass the Hydrostatic or other acceptable test will be held by the Purchaser until the Purchaser furnishes the Sales Contracting Officer (within 60 days after removal) a certification that stipulates the size, serial number, retesters Materials Transportation Bureau identification number or approval issued by the Bureau of Explosives, as

specified in 49 CFR 173, for each cylinder that passed the test. These cylinders will not be reused or sold for reuse until this certification has been furnished the Sales Contracting Officer. The Purchaser will, at its own expense, return those cylinders which do not pass the Hydrostatic or other acceptable test, to a location specified by the Sales Contracting Officer. A refund of the purchase price will be made for those cylinders returned.

ARTICLE I: VESTING OF TITLE.

Notwithstanding any other conditions of sale, title (ownership) to the compressed gas cylinders will not vest in the Purchaser until the Purchaser furnishes the required certification to the Sales Contracting Officer for those compressed gas cylinders which have passed hydrostatic or other acceptable testing.

ARTICLE J: RESPIRATORY PROTECTION PROGRAM.

Personnel shall be protected by personal protective equipment that provides full protection of nose, mouth, and respiratory system, in accordance with 29 CFR 1910.1001. Personnel engaged in the removal or demolition of pipes, structures, or equipment covered or insulated with asbestos and in the removal or demolition of asbestos insulation or coverings shall be provided and shall use respirators as stipulated in 29 CFR 1910.1001. Asbestos shall be presumed present unless shown to the contrary by air samplings.

ARTICLE K: RESPIRATORS - RELEASE OF LIABILITY.

The Government assumes no liability for personal injuries, illnesses, disabilities or death of the Purchaser, its employees or agents, or to any person arising from or related to the purchase of any respirator and/or its use or disposition, whether intentional or accidental.

ARTICLE L: ASBESTOS.

Purchasers are warned that unprotected exposure to asbestos fibers will significantly increase the risk of incurring four diseases: Lung cancer, certain gastrointestinal cancers, mesothelioma and asbestosis. Care must be taken to avoid releasing or causing to be released, asbestos fibers into the atmosphere so that they may be inhaled or ingested. The Occupational Safety and Health Administration at 29 CFR 1910.1001 and 53 CFR 35610, September 14, 1988, sets standards for permissible exposure to airborne concentrations of

asbestos fibers, methods of compliance, personal protective equipment and other measures that must be taken when working with, or in proximity to, asbestos, in the U.S., its territories and possessions. Purchaser certifies that it will, as a minimum, comply with the provisions of 29 CFR 1910.1001 and 53 CFR 35610, September 14, 1988. For actions occurring outside the U.S., its territories and possessions, the provisions apprising of U.S. requirements for protection from asbestos are advisory in nature.

ARTICLE M: PACKAGING, MARKING, AND DISPOSAL OF ASBESTOS.

Asbestos waste, scrap, debris, bags, containers, equipment and asbestos-contaminated clothing consigned for disposal, which may produce airborne concentrations of asbestos fibers, shall be collected and disposed of in leak-proof, sealed, impermeable bags, as prescribed in 29 CFR 1910.1001, 53 CFR 35610, September 14, 1988, and 40 CFR 61.20 et. seq. Prior to placing in bags, asbestos wastes shall be wet down to reduce airborne concentrations. It is essential that the waste asbestos material, whether in bags or containers, be disposed of by burial as specified in 40 CFR Part 260 et. seq. and 40 CFR 61.140.

When practicable, scrap material containing asbestos shall be wet down before handling, hauling or dumping to reduce the generation of airborne fibers. When requested by the SCO, Purchaser must provide specific information as to the "wetting down" methods to be used. The Purchaser must assure that all containers holding asbestos and/or disposable garments with asbestos on them are transported by a safe route to an authorized disposal facility as specified in the Department of Transportation Regulations 49 CFR 172, 173.1090, 174-177 and 40 CFR Parts 260 et. seq.

ARTICLE N: ASBESTOS DUST CONTROL AND HOUSEKEEPING AND CLEANUP PROCEDURES.

All external surfaces where work shall be performed must be maintained free of accumulations of asbestos fibers to prevent further dispersion. Meticulous attention must be given to restricting the spread of asbestos dust and larger forms of waste. To the extent required by 29 CFR 1910.1001 and 53 CFR 35610, September 14, 1988, a dropcloth under work areas, curtains and other enclosures designed to contain the asbestos dust and debris shall be used to keep asbestos from being distributed over the general area. To the extent required by 29 CFR 1910.1001 and 53 CFR 35610, September 14, 1988, appropriate asbestos hazard

warning signs shall remain posted until the site cleanup is complete and the soil, surrounding environment and atmosphere are tested and found safe. The cleanup crew should be under the direction and supervision of the Purchaser to ensure that proper cleanup is performed when asbestos dust/waste is present. All personnel engaged in cleaning up asbestos scrap and waste shall be equipped with the appropriate respiratory and protective clothing, as stipulated in 29 CFR 1910.1001 and 53 CFR 35610, September 14, 1988.

ARTICLE O: PROTECTIVE CLOTHING.

Purchasers will provide and require their employees to wear coveralls and other clothing that will cover the entire body, head, hands, and feet, when they are exposed to airborne concentrations of asbestos fibers, as specified in the OSHA Regulation, 29 CFR 1910.1001 and 53 CFR 35610, September 14, 1988.

ARTICLE P: IMPREGNATED CLOTHING.

This clothing has been impregnated with varying amounts of antitoxological chemical agent CC3 (chloramide, chlorinated paraffin and zinc oxide). Impregnated clothing will not be used for, or converted into, any items to be worn on the person. However, impregnated clothing may be deimpregnated by the Purchaser for ultimate use as clothing, rags or scrap provided the items are dry cleaned. The Purchaser is cautioned that this property should not be burned. Disposal should be effected by burial in an appropriate landfill.

ARTICLE Q: CARTRIDGE CASES ARE NOT REPRESENTED TO BE CLEAN AND/OR INERT.

Regardless of the care exercised, the Purchaser is cautioned that live rounds and/or other contamination may remain in these items. The Government assumes no liability for damages or personal injuries, illness, disabilities, or death of the Purchaser, its employees or any member of the general public arising from or related to the purchase, transportation, sorting, use or other disposition of these items.

ARTICLE R: DISPOSITION AND USE OF HAZARDOUS PROPERTY.

Purchasers represent, warrant, and certify to the United States Government that they will use and ultimately dispose of any hazardous property purchased under this Invitation for Bid as stipulated under applicable local, national, and international laws and

regulations.

ARTICLE S: GOVERNMENT'S RIGHT OF SURVEILLANCE.

a. The Government reserves the right to conduct inspections of the Purchaser's and/or its agent's representatives, assignee's and/or vendee's transportation conveyances and/or equipment utilized to effect removal of the property purchased under this Invitation for Bid. Such actions may be accomplished prior to, during and/or subsequent to removal of the property from Government premises. The Purchaser shall furnish Government employees, or authorized representative with the free access and reasonable assistance required to conduct such inspections.

b. The Government reserves the right to conduct inspections of treatment, storage and disposal facilities of the Purchaser, its agent, representative, assignee and vendee including the equipment, instrumentalities, and records thereof. Such action may be accomplished prior to, during and subsequent to removal of property from Government premises. The Purchaser shall furnish Government employees, or authorized representative with free access and assistance as requested to conduct such inspections.

c. Where the Purchaser transfers any property acquired under this contract to a third party, the Purchaser warrants that by the terms of that transfer, the Government shall retain all rights and privileges conferred upon it by parts a and b of this clause.

ARTICLE T: RIGHT OF REFUSAL FOR HAZARDOUS PROPERTY.

Despite the provisions in Part 2, Condition 8d, the Purchaser will be permitted to cull, sort and segregate those item(s) it desires to remove from each item referenced to this article in the Invitation for Bid. In the event the Purchaser elects to exercise this right of refusal, it hereby agrees that:

a. When items are sold by the "lot", no refund will be made to the purchase price on any portions of the property not removed.

b. When items are sold by the "unit", (each or weight) the purchase price will be adjusted on the basis of the unit price and the quantity or weight actually removed.

If the Purchaser fails to remove sales property or

exercise the right of refusal provision during the free removal period, the Purchaser will be considered to be in default for failure to perform and liquidated damages will be assessed as stipulated by Part 2, Condition 9, for that item. For term sales, if the Purchaser (1) fails to remove the sales property after being notified by the Government as prescribed in the Invitation for Bid, and (2) during the notification period does not exercise the right of refusal provision, then liquidated damages will be assessed as stipulated by Part 4, Condition F or as otherwise specified in the Invitation for Bid, for the quantity of property available and not removed.

ARTICLE U: RECORD MAINTENANCE:

Purchasers of hazardous material/waste are required to maintain an audit trail on all appropriate sales documents for a period of two years subsequent to delivery. The Purchasers' records must include as a minimum the following documents:

- a. DRMS Form 1427 (Notice of Award and Release Document)
- b. Bill of sale (For property sold or donated to another individual or company)
- c. Hazardous waste manifest (If items are purchased as waste)
- d. Copy of the DRMS Form titled, "Continuation of Government's Right to Surveillance"

The Government reserves the right to request and inspect these documents as they deem necessary. In the event a Purchaser fails to maintain or provide any of these documents to the Government, the Government may at its discretion cancel the contract, freeze future deliveries and/or declare the Purchaser nonresponsible, until the appropriate documents have been furnished.

ARTICLE V: CERTIFIED AND NONCERTIFIED RADIATION EMITTING ELECTRONIC PRODUCTS.

Purchasers are warned that the item purchased herewith may not be in compliance with Food and Drug Administration radiation safety performance standards prescribed under 21 CFR 1000 or foreign country regulations, and use may constitute a potential for personal injury unless the item is modified. The Purchaser agrees that the Government shall not be liable for personal injuries to, disabilities of or death of the Purchaser, its employees or any other person arising

from or incident to the purchase of this item, its use, or disposition. The Purchaser shall hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions or claims of any nature arising from or incident to the purchase or resale of this item. The Purchaser agrees to notify any subsequent Purchaser of this property of the potential for personal injury in using this item without a radiation survey to determine the acceptability for use and/or modification to bring it into compliance with the radiation safety performance standards prescribed for the item under 21 CFR 1000.

ARTICLE W: RADIOACTIVE MATERIAL.

Purchasers are warned that some property purchased under this contract such as, but not limited to, switches, circuit breakers, knobs, controls, pointers, instrument dials, markers, etc., may be capable of emitting ionized radiation in varying degrees. The Government assumes no liability for damages to the property of the Purchaser or for personal injuries, disabilities or death of the Purchaser, its employees or to any other person arising from or incident to the purchase of this material or its use or dispositions. The Purchaser shall hold the Government harmless from any or all such demands, suits, actions or claims of whatsoever nature arising from or relating to the purchase of this material. As a safety precaution, the Purchaser should also warn the future possessor or user of this property that the item may be capable of emitting ionized radiation.

ARTICLE X: BERYLLIUM DUST/POWDER.

Beryllium dust/powder is harmful if inhaled and may cause immediate or delayed injury. Use only with adequate local exhaust ventilation, approved respiratory and personal protective devices. May cause rash or external ulcers. Wash thoroughly after handling.

ARTICLE Y: GOVERNMENT'S RIGHT TO MAKE CONTINGENT AWARDS.

In the event that more than one bid is received on any hazardous item(s) in the Invitation for Bid, the Government at the discretion of the Sales Contracting Officer, if in the best interest of the Government, may award the item to one or more Bidders provided the bid prices are reasonable for the property offered. The provision will go into effect when the high Bidder refuses to accept any or all of the property contained in an item award, based on the provisions set forth in Article titled, "Right of Refusal for Hazardous

Property". The Government may offer the remainder of the property, in succession, to the other awardees until all the property has been removed, or all awardees have exercised their right of refusal.

The primary award would be made to the highest Bidder; secondary awards would be made on a contingency basis to the next highest Bidder. If the primary awardee refused to accept any portion of an item or generation, the remaining material would be offered to the secondary buyer.

ARTICLE A: TAXES AND DUTIES.

Purchaser is responsible for compliance with all laws and regulations which may apply to this transaction and shall pay all custom duties, taxes and similar charges which may be levied by respective governments against a Purchaser of United States Government property. The United States Government shall not be liable for taxes, duties, or other assessments imposed by any government as a result of this transaction or imposed on any property transferred under this contract.

ARTICLE B: IMPORTATION RESTRICTIONS.

- a. This sale document does not constitute a guarantee that the property listed herein can be legally imported into the United States.
- b. This sale document does not constitute a guarantee that the property sold hereunder is authorized for export from the country where such property is located. It is the responsibility of the Purchaser to obtain clearance and approval for export from the host country concerned.

ARTICLE C: COMPLIANCE WITH LAWS, RESTRICTIONS, LIMITATIONS, OBTAINING OF LICENSES, ETC.

Bidders are cautioned that there may be local laws, regulations, restrictions, etc., or that various countries may require licenses, permits or clearances relative to the purchase, payment, importation, exportation, transportation, resale, etc., of the property herein offered for sale. Bidders assume full responsibility to ascertain and comply with all such laws, regulations, and requirements.

ARTICLE D: GOVERNMENT AS SHIPPER (EXPORT).

When the Purchaser proposes to transport property from the country designated in the Invitation for Bid to an acceptable destination, they will be required to ship the property, at their risk and expense, on a commercial shipping document showing the United States Government as the shipper, as follows: "United States of America (Name of Sales Contracting Officer) Sales Contracting Officer on behalf of (Name of Purchaser)" to a consignee and destination named by the Purchaser and acceptable to the United States. Each such shipping document shall include this statement: "Only the United States Government may divert this shipment to other than the named consignee or destination." The Purchaser agrees to furnish the Sales Contracting Officer a true copy of the original on-board bill of lading within five days after delivery of the property to the transporting carrier. All insurance will be borne and prepaid by the Purchaser. The United States Government will in no way be held responsible for any loss or damage to the material or for any suits or claims arising from the loading, storage, carriage, discharging, damage to vessel or injury to personnel, general or particular average, nor in any other circumstances not covered above of any nature arising under or incidental to the contract by reason of the fact that the United States Government appears as shipper on the commercial bill of lading. When property has been released for export, the Purchaser agrees to furnish evidence of its arrival at the approved destination and delivery of the approved consignee through a receipted copy of the bill of lading, a landing certificate issued by the country of import, or other documentation acceptable to the Sales Contracting Officer.

ARTICLE E: REPRESENTATION OF NONCOLLUSION.

Bidder represents that the price(s) bid, the item or items bid upon, and the quantity of any item on which it Bid has been arrived at unilaterally and without collusion. The Bidder further represents that the intention to bid these prices, items, and quantities, and the contents of the bid submitted have not been communicated by the Bidder or any employee or agent of the Bidder to any person not an employee or agent of the Bidder and will not be communicated to any such person before public disclosure of the bid by the Government.

ARTICLE F: IMPORT CERTIFICATE AND DELIVERY VERIFICATION (IC/DV).

a. Prior to removal of the property, the Purchaser agrees to submit to the Sales Contracting Officer an

Import Certificate issued by the Government of the country into which the property, or any part of it, is to be imported. A triangular Import Certificate (stamped with a triangular symbol) to indicate that the importer is uncertain about the ultimate destination of the property will not be accepted.

b. Prior to release of the property for import into a country that does not issue an Import Certificate or Delivery Verification, the Purchaser agrees to submit to the Sales Contracting Officer a notification of consignee for approval of the destination and consignee by the Sales Contracting Officer.

c. Within 60 days after release of the property, the Purchaser agrees to submit to the Sales Contracting Officer a Delivery Verification issued by the Government that issued the Import Certificate.

d. Within 90 days after release of the property for import into a country that does not issue an Import Certificate or Delivery Verification, the Purchaser agrees to submit to the Sales Contracting Officer evidence of the arrival of the property at the approved destination and delivery to the approved consignee. Such evidence may consist of a receipted copy of the bill of lading, a Landing Certificate issued by the country of import, or other valid documentary evidence identifying the final destination and consignee.

e. Failure of the Purchaser or any Subpurchaser to submit a required Delivery Verification or other documentary evidence of the arrival and delivery may be cause for administrative action to be taken against the Purchaser or Subpurchaser which could result in the denial of future contracts with the U.S. Government.

ARTICLE G: DISPOSITION AND USE OF PROPERTY.

a. The Bidder agrees to submit with its bid a completed End-Use Certificate (Statement Regarding Disposition and Use of Property) in the form prescribed in this Invitation.

b. The Bidder represents and warrants that the ultimate destination, use, and disposition of the property shall be in accordance with the End-Use Certificate as submitted and approved by the Contracting Officer.

c. When property is annotated "Cat II" in the item description, changes to the Bidder's End-Use Certificate will require the prior written approval of the Contracting Officer.

d. The Bidder further agrees to notify in writing any and all subsequent Purchasers or Receivers of this property regarding the provisions of this article and of the Bidder's End-Use Certificate relative to the authorized destination; the requirement for approval by the Contracting Officer of any change of such destination prior to exportation thereto; the specific United States restrictions on exports and re-exports directly and indirectly to denied areas or other prohibited destinations that may have been specified in this contract; the documentation (e.g., IC/DV documents, lading certificates, answers to follow-up requests) that may be required; and United States sanctions against violators. Subsequent Purchasers and Receivers must also agree to make similar notification to its Purchasers and Receivers. Any unauthorized disposition of the property by a Subpurchaser or subreceiver of the property shall be the responsibility of such Subpurchaser or Subreceiver and, where at fault, of the original buyer from the United States.

e. When property purchased under a single contract is intended for more than one destination, the Bidder agrees to submit, with the End-Use Certificate, a listing of those items specifying quantities intended for each destination and consignee. The Bidder further agrees to furnish the listing referred to herein with each request for approval of a change in destination.

f. Whenever requested by the Contracting Officer to furnish information regarding the actual disposition made of the property awarded to the Purchaser, the Purchaser agrees to furnish the requested information within 30 calendar days after the date of the request.

g. On those items requiring resale approval, the Purchaser agrees to maintain detailed records of their disposition and to provide such records to the Contracting Officer whenever requested to do so.

h. The trade control actions required by paragraphs (a) through (c) of this article will be applied to all items included in the original sale. Resale breakdowns of such sales will still be subject to the same control requirements applicable to the original sale.

ARTICLE H: SPECIAL WASTE NOTICE.

While the material offered under this solicitation is not a regulated waste as offered, subsequent actions taken with regard to the material may cause a regulated waste to come into existence. Purchaser is cautioned that, if ultimate disposal of this material is intended, international, federal, regional, and local laws and

regulations of the country or regions where disposal is intended may apply specific restrictions concerning the disposal of this material. Purchaser is cautioned that it is solely responsible to ascertain the extent to which these regulations may affect it and comply therewith. A list of agencies which should be contacted for information regarding restrictions which may apply to the disposal of this material is provided for informational purposes only in the General Information and Instructions.

ARTICLE I: TRANSPORTING DANGEROUS GOODS.

The Inland Transport Committee of the Economic Commission for Europe sets requirements for the shipping of dangerous goods by road (ADR), rail (RID), and inland waterway (ADN). Some nations also have laws and regulations which impose additional requirements upon the shipper of dangerous goods. The Purchaser, as shipper, is solely responsible for determining the extent to which these regulations affect it and comply therewith. A list of some of the agencies which should be contacted for specific information regarding restrictions which may apply to the transportation of this material in the respective region or country is provided for informational purposes only in the General Information and Instructions.

ARTICLE J: LIABILITY AND INSURANCE.

a. The Purchaser, during the performance of this contract, shall be responsible for and shall hold the Government harmless from any and all loss of, damage to or liability incurred with respect to property of every kind and description, except as provided in Condition No. 14 of the General Sale Terms and Conditions entitled "Risk of Loss", whether or not such property is owned by the Government. The Purchaser shall also hold the Government harmless from bodily injury to or death caused either in whole or in part by the negligence or fault of the Purchaser, its officers, agents or employees in the performance of work under this contract.

b. The general liability and responsibility of the Purchaser under this clause are subject to the following specific limitations: The Purchaser shall not be responsible to the Government for loss, damage, bodily injury to or death of persons when the damage, injury or death results solely from an act or omission of the Government, its employees or results solely from proper compliance by officers, agents, or employees of the Purchaser when specific written directions are provided

from the Contacting Officer or its authorized representative.

c. The Purchaser certifies that it will, at no expense to the Government, maintain adequate insurance to be effective during the term of this contract and any extension thereof.

ARTICLE K: COMPRESSED GAS CYLINDERS.

a. Purchasers are warned that the material may contain items of an explosive or toxic nature, regardless of the care exercised by the Government to remove them or render the material harmless.

b. Purchaser agrees that, prior to reuse of Government cylinders for transporting compressed gasses or resale of the cylinders, the registered Government symbol will be obliterated by stamping or penning over the symbol. In addition, the Purchaser agrees that it will not reuse or ultimately dispose of any cylinder, unless it meets the requirements of all applicable local, national, international laws and regulations and is used in a manner that is safe for the public and the environment.

TIPS FOR BIDDERS

1. Review the terms and conditions of each sale carefully.

They can vary from sale to sale. If you have questions, consult the Sales Contracting Officer at the Sales Office.

2. Don't bid for more material than you can pay for and/or remove within the removal time allowed. Overbuying may result in forfeiture of your bid deposit or assessment of storage charges.

3. Be sure your bid is responsive. Bid are solicited on many different bases; i.e., pound, foot, each, ton. Be sure your bid is submitted on the proper unit of measure.

4. Always verify your unit price and your total price before signing and mailing the bid. Mistakes can prove costly to you and will delay processing your bid. Initial the erasures and changes made on your bid.

5. Be sure to address your bid to the exact mailing address given in the sales catalog. CAUTION: Do not mail Bid to DoD Surplus Sales, P.O. Box 1370, Battle Creek, Michigan 49016.

6. END USE CERTIFICATE / BID and AWARD

PAGE: When bidding on any items which require an End Use Certificate, make sure the certificate is properly filled out and accompanies your Bid and Award page. NOTE: The name and address on the End-Use Certificate must be identical to that entered on your Bid and Award page.

7. Mail your bid early to allow extra time for postal handling. If you are using a courier service, ensure their delivery time is prior to the bid acceptance time and date.

8. To ensure Bid are expeditiously processed, proper credit is given for your participation and to preclude opening sealed Bid for identification, your bid envelope must contain:

--Your complete return address. (Always use the same name and address that appears on your bid form).

--The sale number, and opening date and time.

--Your Bidder identification number if one has been assigned.

9. All payments made on sales contracts must be submitted directly to the Sales Office conducting the sale unless otherwise instructed by the Sales Contracting Officer.